



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

JUN 13 2005

OFFICE OF  
CIVIL RIGHTS

**RETURN RECEIPT REQUESTED**  
**Cert. No. 7004 1160 0002 3622 7489**

**In Reply Refer to:**  
**EPA OCR File No. 04R-04-R6**

Douglas Meiklejohn, Esq.  
New Mexico Environmental Law Center  
1405 Luisa St., Suite 5  
Santa Fe, NM 87505

**Re: DISMISSAL OF ADMINISTRATIVE COMPLAINT**

Dear Mr. Meiklejohn:

This is to notify you that the U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR) is dismissing the January 15, 2004, administrative complaint filed by the New Mexico Environmental Law Center against the New Mexico Environment Department (NMED). The complaint was filed on behalf of the South Valley Coalition of Neighborhood Associations, the Isleta Pueblo, and the SouthWest Organizing Project concerning the Southwest Landfill in Bernalillo County, New Mexico. The complaint alleged that NMED had violated Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d *et seq.*, (Title VI) and EPA's Title VI implementing regulations at 40 C.F.R. Part 7. As explained below, the complaint has become moot as the result of a state district court decision.

NMED issued a Resource Conservation and Recovery Act (RCRA) permit for the Southwest Landfill on May 8, 1997. The permit was challenged in court and the court remanded two issues to NMED on September 4, 1998. NMED issued an Amended Final Order for the landfill on November 17, 1998. OCR received a complaint from the Law Center concerning the landfill on May 14, 1999. OCR rejected the complaint as moot on December 17, 2001, because the RCRA permit could not be used without zoning approval from Bernalillo County. The Law Center requested reconsideration of OCR's rejection and OCR granted the Law Center permission to refile the complaint within 60 days after the County approved zoning for the landfill. The Law Center refiled the complaint on January 16, 2004, after the County approved zoning for the landfill on November 18, 2003.

In the Spring 2005 issue of the Law Center's newsletter, the Green Fire Report ([www.nmenvirolaw.org](http://www.nmenvirolaw.org)), however, the Law Center reported that it appealed the County's

decision to state district court in December 2003 and that the court revoked the permit. The Law Center's report was confirmed by an article in the Albuquerque Journal, which reported that the Bernalillo County district court reversed the County's zoning decision in November 2004. *Decision to Expand Dump Reversed*, ALBUQUERQUE JOURNAL (Nov. 25, 2004).

The Law Center's May 1999 complaint was rejected by OCR as moot in December 2001 because the landfill did not have zoning approval from the County and could not, therefore, utilize the RCRA permit issued by NMED in May 1997. With OCR's permission, the Law Center refiled its complaint in January 2004 after the landfill obtained zoning approval from the County in November 2003. The County's zoning approval, however, was reversed by the County district court in November 2004 and the RCRA permit issued by NMED in May 1999 once again cannot be utilized. OCR is, therefore, once more rejecting the Law Center's complaint as moot.

It is OCR's understanding, that the district court's decision has been appealed. The district court's decision may, therefore, be reversed by the court of appeals and the County zoning approval for the landfill revived. OCR is, therefore, rejecting the Law Center's complaint without prejudice and the Law Center may refile its complaint within sixty (60) days after a court decision that reinstates County zoning approval for the landfill, if the RCRA permit issued by NMED in May 1997 is still in effect.

If you have any questions, please contact Mike Mattheisen in OCR by telephone at 202-343-9678, or by mail at: U.S. EPA, Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460-1000.

Sincerely,



Karen D. Higginbotham  
Director

cc: Ron Curry, Secretary  
New Mexico Environment Department  
P.O. Box 26110  
1190 St. Francis Drive, Suite N4050  
Santa Fe, NM 87502

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